



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 25-2015

7 October 2015

ATTY. ANSELMO C. ABUNGAN

Assistant Secretary, Legal Services

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR)

Visayas Avenue, Diliman, Quezon City

Re: Philippine Association of Detective and Protective Agency Operations (PADPAO) prescribed Retirement Benefit


Dear ASec. Abungan:

This refers to your letter seeking our opinion on whether the Retirement Benefits of security guards may be offered for free by a participating bidder to a procuring entity.

It is represented that the DENR conducted a competitive bidding for its Security Guard Requirements for Calendar Year (CY) 2015. There were five (5) participating bidders. Four (4) bidders provided the amount of PhP 845.63/security guard for retirement benefits as required under Wage Order No. NCR-18/b issued by PADPAO, while the bidder with the lowest calculated bid (LCB) offered for free the prescribed Retirement Benefits by indicating "0" (zero) in its bid offer. In addition, you mentioned that to offset the amount offered for free, it appears that the bidder will shoulder the payment of Retirement Benefits from its Administrative Overhead Expense under the Agency Fee, which may reduce the minimum 10% Agency Fee pursuant to DOLE 18-A. It is in this context that you are requesting our opinion on the propriety of offering the Retirement Benefits for free to the government.

It bears stressing that Republic Act (RA) 9184, through Section 25.2 of its Implementing Rules and Regulations (IRR), supports the enforcement of labor laws and social legislations by requiring bidders to submit an Omnibus Sworn Statement (OSS), which includes, among others, a statement that they comply with labor laws and standards. This is to ensure that winning bidders in government contracts, where engagement of labor is a necessary component, are compliant with existing labor laws and standards and social legislations.

Thus, an offer by the bidder of Retirement Benefits for free to the government is not in accordance with Wage Order No. NCR-18b issued by PADPAO since the prescribed rate (PhP 845.63) was not specified in its offer, which is contrary to its declaration in the OSS requiring compliance with labor laws and standards.

In an earlier opinion with a similar issue,¹ we had the occasion to opine, thus: 

¹ NPM 101-2014

Section 32.2.1(a)² of the IRR of RA 9184 relative to the completeness of the bid should be taken as a whole and should not be applied in segregated parts. This section shows that the appreciation of a zero (0) bid in one item as an offer for free to the government is subject to the condition that all the required items in the bidding documents is addressed or complied with. Thus, if a required item is not addressed or complied with by the bidder, the bid shall be considered non-responsive and the bidder will be automatically disqualified. In which case, a zero (0) bid in one item, though treated an offer for free, can no longer be countenanced since the bid is already considered non-responsive due to non-compliance with other requirements of the Procuring Entity.

In the BDS³, one of the requirements is that the financial proposal should not be lower than the amount/rate prescribed by PADPAO. Hence, the zero (0) bid in uniform and retirement benefit which decreases the "Amount in Favor of the Guard and Government" made the bid lower than the PADPAO prescribed rate. Consequently, the bid should have been declared non-responsive for violating Clause 13.1 of the BDS, particularly the failure to comply with the PADPAO rate. This interpretation reconciles the provisions of Section 32.2.1 of the revised IRR of RA 9184 and Clause 13.1 of the BDS, which technically are not inconsistent with each other, but are in fact complementary.

Moreover, appreciating the zero (0) bid in one item as an offer for free to the government will create a strange situation wherein a bidder who bids Php 99.00 for "Uniform Allowance"⁴ is declared non-responsive (the prescribed amount being Php 100.00) while the bidder with zero (0) bid is declared responsive. To prevent this absurd situation, it is but proper to declare non-compliant a bidder who specified zero (0) bid in any item that has a specifically prescribed PADPAO rate.

In addition, as regards the applicability of the minimum 10% Agency Fee of the total contract cost in accordance with Section 9(b)(ii) of Department of Labor and Employment Department (DOLE) Order No. 18-A, we wish to stress that the GPPB issued Resolution No. 26-2013 reiterating the view expressed in Policy Matter Opinion No. 03-2012⁵ that Section 9(b)(ii) is violative of Section 31 of RA 9184 and its IRR, which prohibits the imposition, directly or indirectly, of a lower limit or floor on the amount of the award.

We hope this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and

² Section 32.2.1 Completeness of the bid. Unless the Instruction to Bidders specifically allow partial bids, bids not addressing or providing all of the required items in the Bidding Documents including, where applicable, bill of quantities, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a "0" (zero) for the said item would mean that it is being offered for free to the Government;...

³ A bid price wherein the "amount to guard and government" is lower than the minimum rate per guard per month prescribed in PADPAO Wage Order NCR-No.18b for the National Capital Region and PADPAO Wage Order No. RB III-17 for areas within the jurisdiction of Region III shall automatically be disqualified.

⁴ Uniform Allowance (RA 5487) is PhP 100.00 under PADPAO Rate Computation per Wage Order NCR No. 18b and Wage Order No. RB III-17.

⁵ dated 30 November 2012.

may not be applicable given a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V 

//sd2R